SUBSIDIES ENFORCEMENT
ANNUAL REPORT TO THE CONGRESS

Joint Report of the
Office of the United States Trade Representative
and the
U.S. Department of Commerce

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Executive Summary

Vigorous enforcement of the rules and disciplines of the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) continues to be a top priority for the Office of the U.S. Trade Representative (USTR) and the Department of Commerce (Commerce). At the time of its inception, the Subsidies Agreement was intended to serve as the primary instrument for reining in the use of distortive subsidy practices worldwide. Under the Uruguay Round Agreements Act of 1994 (URAA), Commerce was directed to conduct an ongoing review of the operation of the Subsidies Agreement, with specific emphasis on certain areas, and to report its findings to the Congress by June of last year. Approximately five years into the Agreement's use, Commerce found that – although experience with some provisions of the Subsidies Agreement remains somewhat limited -- the multilateral disciplines established in the Agreement generally provide effective tools for preventing the use of prohibited subsidies and for challenging other government subsidies whose effects cause them to be in violation of the Agreement. Accordingly, USTR and Commerce have continued their close collaboration to monitor and strictly enforce the obligations of the Subsidies Agreement.

This past year witnessed important developments in the WTO, in terms of both the operation of the Subsidies Agreement and the work of the WTO's Committee on Subsidies and Countervailing Measures (Subsidies Committee). The United States actively participated in the Committee's review of a new series of comprehensive subsidy notifications from various WTO Members, as well as in the review of the provisions concerning non-actionable subsidies and subsidies giving rise to presumptions of serious prejudice – or the so-called "green light" and "dark amber" rules. Due to differences among WTO Members as to whether these or other WTO provisions should be amended, no consensus was reached to extend the application of these two sets of provisions beyond the end of 1999.

In the dispute settlement arena, 1999 was a year of mixed results for the United States. In several cases, panels issued rulings which, consistent with U.S. policy and statutory objectives, strictly enforced the WTO's rules against the use of export subsidies. These decisions should help make it easier to challenge subsidies received by foreign producers. However, the outcomes reached in two subsidies disputes in which the United States was a defendant were substantially at odds with U.S. interests, and we are appealing these decisions.

Lastly, a number of issues associated with implementation of the Subsidies Agreement – and with the development of new disciplines to address subsidies that are particularly damaging environmentally – came under examination as WTO Members

developed an agenda for the 3rd Ministerial Conference in Seattle and the possible launch of a new Round of multilateral trade negotiations. While the United States made considerable progress to build support for the negotiation of new disciplines to address subsidies which contribute to excessive harvesting in the fisheries sector, we also worked hard to preserve the integrity of existing WTO disciplines as a possible agenda took shape. In the end, even though no agreement was reached, the United States intends to continue to work actively in the WTO to maximize the extent to which multilateral subsidy disciplines can serve U.S. interests.

The Administration has also put its subsidies enforcement "infrastructure" to good use during this past year in order to minimize the adverse effects of recent foreign economic crises on the U.S. economy. One industry that experienced severe import competition within the past year as a result of foreign financial and economic instability was the steel industry. The Administration has aggressively responded to the steel crisis with a variety of initiatives and, in early January 2000, these efforts were beginning to bear fruit as the industry started to show signs of recovery. One aspect of the Administration's response to this crisis was the stepped-up identification and surveillance of foreign subsidy practices that may distort trade and exacerbate trade frictions. In particular, Commerce has undertaken a comprehensive analysis of subsidies and market distorting trade practices of steel producing countries around the world. The results of this analysis, along with recommendations for addressing the distortive subsidies and other trade barriers that have been identified, will be the subject of a separate report which the Administration will provide the Congress and public within the coming months.

In the coming year, the Administration will continue to take strong, pro-active steps to address the impact of distortive subsidies on American firms and their workers in both the U.S. and foreign markets. To accomplish this, the Administration will place a renewed emphasis on its participation in the WTO, in order to address our broad policy objectives, and on monitoring, counseling and advocacy activities designed to serve the specific interests of those facing more particular problems from subsidized competition. In the WTO, we will focus our attention on various core implementation priorities, including compliance with several transitional deadlines which face most developing countries with respect to the elimination of prohibited local content and export subsidies. We will also increase our efforts to reach out to and anticipate the needs of U.S. interests through focused monitoring of imports and of the subsidy practices of foreign governments, and by more broadly publicizing to the U.S. commercial community and the general public the wealth of subsidy information that is available through the Internet and the Commerce Subsidies Library at "www.ita.doc.gov/import_admin/records/esel".

INTRODUCTION

U.S. trade policy responses to the problems associated with foreign subsidized competition provide USTR and Commerce with both unique and complementary roles. In general, it is USTR's role to coordinate the development and implementation of overall U.S. trade policy with respect to subsidy matters, represent the United States in the WTO, including its Subsidies Committee, and chair the interagency process on matters of policy. The role of Commerce's Import Administration is to enforce the countervailing duty (CVD) law and to provide the technical expertise needed to analyze and understand the impact of foreign subsidies on U.S. commerce. With the enactment of the URAA in 1994, the agencies' roles were further refined and mutually reinforced in order to provide greater thrust to the enforcement of U.S. multilateral rights with respect to subsidies that harm the interests of U.S. firms and workers. Among the joint responsibilities assigned to USTR and Commerce, as set forth in section 281(f)(4) of the URAA, is the submission of an annual report to the Congress describing the Administration's monitoring and enforcement activities throughout the previous year. This report is the fifth annual report issued under this provision.

MONITORING AND ENFORCEMENT ACTIVITIES

The Subsidies Agreement establishes multilateral disciplines on subsidies and provides mechanisms for challenging government programs that violate these disciplines. WTO disciplines are enforceable through binding dispute settlement, which specifies strict timelines for bringing an offending practice into conformity with the pertinent obligation. Remedies for violations of the Subsidies Agreement include the withdrawal or modification of a subsidy program, or the elimination of the program's adverse effects.

In general, the Subsidies Agreement disciplines government subsidy practices through a method of categorization based on the "stop - proceed with caution - go" symbolism of the common traffic light. Export subsidies ("subsidies contingent . . . upon export performance") and import substitution subsidies ("subsidies contingent . . . upon the use of domestic over imported goods") are prohibited – or "red light" – practices. Subsidies provided for certain industrial research and development, regional development and environmental compliance purposes are both permitted and non-actionable ("green light") practices, so long as such government assistance is provided according to the strict conditions and criteria stipulated in the Agreement. Finally, all other ("yellow light") subsidies are permitted, but may be challenged through WTO dispute settlement or CVD proceedings. These subsidies become "actionable" when: (i) they are limited to a firm, industry or group thereof within the territory of a WTO Member (so-called "specific" subsidies); and (ii) they cause adverse trade effects. Certain subsidies, moreover, are presumed to cause such effects -- *i.e.*, subsidies granted in certain circumstances to cover operating losses, subsidies for the direct forgiveness of debt, or the subsidization of a

product in excess of five percent of the product's value. Because they were viewed as straddling the line between prohibited and actionable subsidies, these presumptively harmful subsidies/circumstances are referred to as the "dark amber" category of subsidies.[1]

On the basis of these categories of discipline, the Subsidies Agreement provides remedies for subsidies affecting competition in one's domestic market, in the market of the subsidizing government and in third country markets. These disciplines serve as a meaningful complement to the U.S. CVD law, which authorizes Commerce to impose a duty on imports if Commerce determines the imports are subsidized and the U.S. International Trade Commission (ITC) finds that those imports are causing injury to a U.S. industry. By its nature, the CVD law focuses only on the effects of foreign subsidized competition in the United States. Although the procedures and remedies are different, the Subsidies Agreement provides an alternative tool to address distortive foreign subsidies that affect U.S. businesses in an increasingly global marketplace. Within Commerce, these activities are carried out by the Subsidies Enforcement Office (SEO).

The monitoring and enforcement activities of USTR and Commerce during the preceding year fall into the following categories: (A) reporting to Congress on the overall operation of the Subsidies Agreement since it came into force; (B) participating in the work of the Subsidies Committee, including its review of the dark amber and green light provisions; (C) monitoring subsidy activities and counseling the U.S. private sector and relevant government agencies about WTO subsidy disciplines; (D) responding to the U.S. steel crisis; and (E) taking action, where appropriate, to enforce U.S. rights and to address real and potential harm to U.S. interests.

A. 1999 Report to Congress on the Operation of the WTO Subsidies Agreement

The URAA required the Secretary of Commerce, in consultation with other departments and agencies, to conduct an ongoing review of the operation of the Subsidies Agreement, with specific emphasis on three areas. These areas concern the effectiveness of the Subsidies Agreement in (1) disciplining the use of subsidies which are prohibited by the Agreement, (2) remedying the adverse effects of subsidies which are actionable, particularly through a special provision of the Agreement which establishes a rebuttable presumption of adverse trade effects when certain types of subsidies are provided (*i.e.*, the

[1] As explained in section B, part 1 of this report, pursuant to Article 31 of the Subsidies Agreement, the green light and dark amber provisions have now expired due to the lack of a consensus among WTO Members to continue application of these provisions beyond December 31, 1999.

dark amber category), and (3) ensuring that the provision for certain non-actionable (green light) subsidies does not undermine the benefits derived from other parts of the Subsidies Agreement. The URAA also required the Secretary to report to the Congress on this review by June 30, 1999. This report can be found on the Subsidies Enforcement web site at "http://www.ita.doc.gov/ import_admin/records/esel." An overview of the report follows here.

In its 1999 report, Commerce found that the application of the red light provisions in the context of both CVD investigations as well as multilateral dispute settlement demonstrated that the Subsidies Agreement is effective in disciplining the use of prohibited subsidies. The report found that the prohibition on the use of red light subsidies had resulted in a lower incidence of export and import substitution subsidies in developed countries compared with developing countries. Moreover, where governments (both developed and developing) did resort to the use of prohibited subsidies, WTO panels have shown little tolerance and recommended their elimination. Several of these cases are discussed section E of this report.

Commerce found further that there had been little experience with the category of dark amber subsidies. This might have been attributable to a greater degree of uncertainty concerning how the provisions, in practice, would have operated in comparison with a "standard" serious prejudice subsidy complaint, *i.e.*, one not involving any presumption. An Informal Group of Experts was established by the Subsidies Committee to examine, develop and recommend to the Committee additional rules for calculating the value of subsidies on the basis of the cost to the subsidizing government.[2] Their reports and recommendations were intended to provide some additional certainty with respect to the dark amber provision involving the five percent subsidization ceiling. However, it was difficult to gauge with any precision how effectively this provision served to enhance the Agreement's subsidies disciplines. One way it may have served to increase disciplines was through its deterrence effect, *i.e.*, in the degree to which it may have dissuaded governments from providing subsidies of the kind that were presumptively considered to

[2] Annex IV of the Agreement provides guidance on the calculation of the total *ad valorem* subsidization of a product, based on the cost to the government of providing the subsidies, for purposes of determining whether there exists a presumption of serious prejudice under the now-lapsed Article 6.1(a) – part of the dark amber category. Footnote 62 to Annex IV provides that "[a]n understanding among Members should be developed, as necessary, on matters which are not specified in this Annex or which need further clarification." The Committee created the Informal Group of Experts for this purpose, and the Group has issued two reports to the Committee, in 1997 and 1999, providing its recommendations on 22 separate cost-to-government valuation and allocation issues. These reports were not formally adopted by the Subsidies Committee, due to disagreements among certain WTO Members over some of the recommendations and their implications for interpreting the Agreement. The reports were, however, "taken note of" by the Committee and could be referred to by WTO panels or other parties for possible guidance on calculation questions where the Group's work might be relevant

cause serious prejudice. However, there was no evidence which could objectively or empirically be used to measure the impact of the dark amber presumption.

As to experience with the green light provisions, first, since the entry into force of the Agreement, there have been no notifications of alleged green light subsidies made to the Subsidies Committee.[3] In addition, no Member has attempted to defend a subsidy practice in WTO dispute settlement based on a rationale that it meets the green light criteria. In terms of U.S. CVD proceedings, application of the green light provisions of the Subsidies Agreement has been guided by the statutory mandate to narrowly construe such provisions in order to prevent their misuse. To this end, Commerce established rules specifying the timelines and procedures for claiming green light treatment in the context of a CVD case. Commerce made clear that in order to establish a subsidy's non-countervailability, foreign respondents must make a claim and present evidence supporting such a claim within a reasonable time period for the claim to be properly investigated and analyzed. Moreover, when a proper claim is received, the subsidy is carefully examined to determine whether the exacting standards of the green light provisions have all been met. Since enactment of the URAA, Commerce has completed numerous CVD investigations and multiple reviews of CVD orders. Of the more than 500 subsidies investigated in those proceedings, Commerce received fewer than ten requests for green light treatment. None of these subsidies was found to merit green light status.[4]

To summarize, although the report found that there had been only limited experience with some of the categories of subsidies mentioned above, it was generally found that the multilateral disciplines established in the Subsidies Agreement worked effectively when used to prevent or challenge the use of prohibited subsidies and to challenge subsidies that have adverse trade effects. Further, no evidence was identified to suggest that the inclusion of a category of non-actionable subsidies detracted from the effective disciplines contained in other provisions of the Subsidies Agreement. This Agreement remains the most important instrument available to discipline worldwide subsidy practices.

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[3] While some WTO Members have contended that certain subsidies that they have included in their general WTO subsidy notifications meet the green light criteria, they have not included the necessary information to demonstrate this and did not submit the notification pursuant to the relevant green light provisions of Article 8.3 of the Agreement. Consequently, the United States and other Members have made clear that these assertions of green light status carry no weight under the green light notification and review provisions spelled out in Article 8.

[4] It should be noted that whereas the United States rejected an Italian claim for regional green light treatment for certain subsidies provided to the Mezzogiorno region in the investigation of Pasta from Italy, the investigating authorities of Canada and New Zealand accorded these same subsidies green light treatment in CVD investigations they undertook at approximately the same time as Commerce's proceeding.

B. The WTO Subsidies Committee

The work of the Subsidies Committee in 1999 continued to address a variety of implementation-related concerns.[5] One such area of work was the ongoing Committee review of Members' CVD laws and actions. The United States actively participated in the Committee's review of new CVD legislation notified by Argentina, Australia, Dominica, Egypt, the European Union (EU), Fiji, Ghana, Indonesia, Jamaica, Latvia, Maldives and Trinidad and Tobago. Last year, the Committee also selected a replacement member for its Permanent Group of Experts (PGE)[6]; approved several individuals for an indicative roster of qualified persons to serve as arbitrators in green light subsidy challenges, as provided for under Article 8.5 of the Agreement; and considered additional recommendations from its Informal Group of Experts on matters relating to the implementation of Article 6.1(a) of the Agreement.[7] The latter two of these activities relate to the use of various aspects of the so-called green light and dark amber provisions. As foreshadowed in last year's report and noted above, these provisions were the subject of a special review this past year under Article 31 of the Agreement. The results of that review are described below.

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[5] Another WTO body which carried out work of relevance to subsidies disciplines in 1999 is the Committee on Trade and Environment (CTE). The United States played a leading role in the CTE, and elsewhere, in identifying areas where reduction or elimination of subsidies can yield both trade and environmental benefits. A clear example is in the fisheries sector, where subsidies have played a major role in exacerbating the problems of overcapacity and over-fishing. The United States has worked closely with like-minded countries to build a consensus for the development of stronger WTO disciplines to address this problem.

[6] Article 25 of the Agreement requires the Committee to establish a Permanent Group of Experts, the mission of which is to (i) provide assistance to a dispute settlement panel, upon request, as to whether a measure is a prohibited subsidy; (ii) provide Members with confidential advisory opinions on the nature of any subsidy proposed to be introduced or currently maintained by that Member; and (iii) provide the Committee with advisory opinions on the existence and nature of any subsidy. The current members of the PGE are Mr. Marco Bronckers, Mr. A.V. Ganesan, Mr. Gary Horlick, Professor R.G. Flores Junior and Mr. Robert Martin.

[7] Annex IV of the Agreement provides guidance on the calculation of the total *ad valorem* subsidization of a product, based on the cost to the government of providing the subsidies, for purposes of determining whether there exists a presumption of serious prejudice under the now-lapsed Article 6.1(a) – part of the dark amber category. Footnote 62 to Annex IV provides that "[a]n understanding among Members should be developed, as necessary, on matters which are not specified in this Annex or which need further clarification." The Committee created the Informal Group of Experts for this purpose, and the Group has issued two reports to the Committee, in 1997 and 1999, providing its recommendations on 22 separate cost-to-government valuation and allocation issues. These reports were not formally adopted by the Subsidies Committee, due to disagreements among certain WTO Members over some of the recommendations and their implications for interpreting the Agreement. The reports were, however, "taken note of" by the Committee and could be referred to by WTO panels or other parties for possible guidance on calculation questions where the Group's work might be relevant

1. *Article 31 Review and the "Provisional Application" of the Green Light and Dark Amber Subsidy Provisions*

Article 31 of the Subsidies Agreement, entitled "Provisional Application," states that "[t]he provisions of paragraph 1 of Article 6 and the provisions of Article 8 and Article 9 shall apply for a period of five years, beginning with the date of entry into force of the WTO Agreement. Not later than 180 days before the end of this period, the Committee shall review the operation of those provisions, with a view to determining whether to extend their application, either as presently drafted or in a modified form, for a further period." In other words, Article 31 required the Subsidies Committee to review the operation of the green light and dark amber subsidy rules beginning no later than July 5, 1999, with the proviso that these provisions would expire at the end of 1999 unless an explicit decision was made to keep them in force, as set forth in the Agreement or with modifications.

The Uruguay Round negotiators of the Subsidies Agreement included this special review requirement because they recognized that the green light and dark amber provisions were the most novel and untested of all of the new Agreement's provisions. Given that WTO Members had no or little prior experience under the General Agreement on Tariffs and Trade (GATT) in the use of either explicit legal presumptions of serious prejudice or normative rules for exempting certain subsidies from the potential of CVD or multilateral subsidy remedies, the negotiators sought to provide for the review and potential termination or modification of these rules within a fixed time period in the event that they worked in an unforeseen -- and undesirable -- fashion. Moreover, to ensure that this review requirement would be taken seriously, the Agreement required an affirmative, consensus-based decision of the Committee in order for the provisions to remain in effect beyond five years.

In crafting the U.S. implementing legislation, the Administration and the Congress were similarly cautious with respect to the review and extension of these rules. First, a variety of provisions in the URAA had the general objective of ensuring that the green light provisions did not serve as loopholes or otherwise undermine the increased disciplines over subsidies achieved in the Uruguay Round negotiations. More specifically, in regard to the question of the Article 31 review, section 282 of the URAA imposed a number of jointly agreed requirements on the Executive Branch to make certain that the United States' participation in the review was thorough, careful and reflective of the full spectrum of U.S. interests.

As the Statement of Administrative Action accompanying the URAA explains, "[s]ection 282 . . . provides for an ongoing review of the Subsidies Agreement and establishes general and specific objectives with respect to that review. The general objectives are to ensure that: (1) the provisions of the Subsidies Agreement regarding red light, dark amber and yellow light subsidies are effective; and (2) the provisions . . . regarding green light subsidies do not undermine the benefits derived from the other portions of the Subsidies Agreement." One element of that review has been the annual

report to the Congress on the Administration's subsidies monitoring and enforcement efforts. Another was the report of last year, described in section A above, prepared by Commerce, on the overall operation of the Agreement, with particular focus on the two general objectives cited above, as required by section 282(d) of the URAA.

Essentially, the URAA provisions concerning the Article 31 review stand for the proposition that the green light and dark amber rules had to be judged as enhancing, or at least not detracting from, the overall effectiveness of the Subsidies Agreement in order for the United States to conclude that it was appropriate to extend their application. To accomplish this, the Statement of Administrative Action continues by explaining that

> "the provisions [of U.S. law] in question expire 66 months after the entry into force of the WTO unless extended by Congress. Before the decision of the Subsidies Committee, USTR is directed to consult with the Senate Finance and House Ways and Means Committees. (The Administration will not limit its consultations to those committees, but will ensure that it consults with all interested committees, as well as the private sector.) Should the Subsidies Committee decide to extend Articles 6.1, 8 and 9 of the Agreement, either as presently drafted or in modified form, the Administration, after further consultations with relevant committees and the private sector, will submit legislation to implement the agreed extension. A bill to provide for such an extension would be eligible for consideration under 'fast track' procedures.[8] If Articles 6.1, 8 and 9 are not extended, section 282(c)(5) . . . directs USTR to submit a report to Congress setting forth the provisions of this bill which should be repealed or modified as a result of the sunset of these Articles."

In light of these requirements, the Administration undertook extensive consultations with a broad spectrum of interested parties throughout 1998 and 1999. The results of that process were discussed fully in the fourth annual report to the Congress submitted last February and in Commerce's special report on the operation of the Agreement of last summer. On the basis of those consultations and our experience with the operation of these provisions, the United States took the position that it could join a consensus to extend the application of Articles 6.1, 8 and 9, as written, for another reasonable period of time (*e.g.*, up to another five years). This was consistent with the vast majority of the advice that we had received from our statutorily-mandated advisory committees, other private sector and state/local government representatives and interested members of the Congress. It reflected the mixed views which the United States has always held about the value and

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[8] The URAA already authorized the use of "fast track" procedures to approve any such extension, so this is unrelated to the issue of any new trade agreement "fast track" authority to which the Congress and Executive Branch might agree in the future.

danger of these provisions, and the relative lack of experience with their use since establishment of the WTO.

In the WTO, the question of the review was initially put to the Subsidies Committee at its first regular meeting in the spring of 1998. At that time, few WTO Members openly expressed a point of view, and the Committee took no formal action except to authorize the Chairman to initiate informal consultations with Members and, later, organize a more focused process of informal committee meetings. These informal meetings and consultations were to begin before the July 5, 1999, deadline by which the Committee was to have "review[ed] the operation of [the] provisions." Subsidies Committee Chairmen periodically held informal bilateral consultations with various delegations throughout 1998 and 1999, and the Committee as a whole met informally to discuss the issue several times last summer and fall. Although many WTO Members supported an extension of these provisions, a number of developing country Members – led by India – asserted that the provisions worked exclusively or primarily in favor of developed countries, and they began to express doubts about whether they would support an extension unless certain modifications were made to these provisions, other parts of the Subsidies Agreement and, eventually, even other WTO Agreements. These positions were advanced while preparations for the Seattle WTO Ministerial were intensifying, and it became clear that at least some delegations were increasingly viewing the Article 31 review in the context of the overall agenda before the WTO as efforts were made to launch a new multilateral Round of negotiations at Seattle.

Some developing country Members, such as the Dominican Republic, indicated that the operation of Annex VII[9] to the Agreement would need to be evaluated and clarified in order for them to support any extension of Articles 6.1, 8 and 9. Others, such as India and Brazil, sought changes to the provisions so that the green light rules would encompass the export and production subsidies of developing countries that they claimed were needed to

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[9] If a developing country WTO Member is identified in Annex VII, Article 27 of the Agreement provides it with more generous treatment than is provided for other developing countries, *i.e.*, they are not immediately subject to export subsidy phase-out requirements and, for a limited remaining period, their exports benefit from higher *de minimis* subsidy rates in countervailing duty investigations. Annex VII identifies two groups of the poorest developing countries: (i) the least developed countries as designated by the United Nations and (ii) certain other specifically named countries whose annual GNP per capita was below $1000 at the conclusion of the Uruguay Round negotiations. The specifically named countries are: Bolivia, Cameroon, Congo, Côte d'Ivoire, the Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, the Philippines, Senegal, Sri Lanka and Zimbabwe. Annex VII indicates that this latter group of countries shall continue to benefit from the more generous treatment described here until such time as their annual per capita GNP reaches $1000. Over the past five years, World Bank data has indicated that the annual per capita GNP of the Dominican Republic, Egypt, Guatemala, Indonesia, Morocco and the Philippines rose above $1000 (although, for some, it has since dropped below $1000).

further their development. Additional demands were made to weaken other Subsidies Agreement rules applicable to developing countries, including rules governing the application of developed country CVD remedies to imports from developing countries. Finally, certain Members attempted to draw linkages between the question of an extension of these provisions and their efforts to obtain blanket extensions of the deadlines applicable to transitional obligations for developing countries in such other WTO Agreements as the Agreement on Trade-Related Investment Measures (TRIMs). Ultimately, in large part as a result of these demands, the Subsidies Committee could not reach any consensus on the grounds by which the application of Articles 6.1, 8 and 9 might be extended. The United States took the position that, irrespective of what actions might be considered or taken to address the variety of implementation concerns across WTO Agreements that various WTO Members had identified, the Article 31 issue had to be judged on its own merits – and the United States could not support vague or unreasonable proposals to expand the application of the green light provisions to include practices such as export subsidies. Other developed countries expressed similar views, whereas a handful of developing countries expressed doubts that there could be any basis acceptable to them to extend the application of Articles 6.1, 8 and 9. As a result, the Committee was unable to take a decision on this matter by the end of 1999, and the provisions automatically lapsed as of January 1, 2000, as stipulated by Article 31 of the Agreement.

Pursuant to the requirements of the URAA, USTR plans to submit by no later than June 30, 2000, a separate report to the Congress identifying the provisions of U.S. law that are affected by these developments. As set forth in section 251 of the URAA, the green light provisions of U.S. countervailing duty law – which make non-countervailable certain kinds of industrial research, regional development and environmental compliance subsidies that meet the criteria of Article 8 of the Agreement and the complementary sections of U.S. law – will no longer have effect as of July 1, 2000, unless new legislation is enacted before that date thereby altering that status.

2. *Review of Notified Subsidies*

As discussed above, the Subsidies Agreement provides for strong disciplines on government subsidy practices. One way in which the Agreement facilitates compliance with these disciplines, and the monitoring of such compliance, is through subsidy notification. In some instances, notification is mandatory, while in others it is an optional feature that can be used to secure a benefit provided by the Agreement -- such as to make use of transition periods during which a country would come into conformity with Agreement norms. In keeping with the objectives and directives expressed in the URAA, WTO subsidy notifications also play an important role in the United States' monitoring and enforcement activities to protect U.S. rights and benefits under the Subsidies Agreement.

Under Article 25.2 of the Agreement, Members are required to report certain information on all measures, practices and activities that, as set forth in Articles 1 and 2 of

the Agreement, meet the definition of a subsidy and are specific within the territory of a Member. "New and full" notifications are submitted every third year, whereas updating notifications (usually containing information solely on changes made to previously notified subsidies) are submitted in the intervening years. Article 26 of the Agreement charges the Committee with reviewing the full notifications at special sessions held every third year, whereas updates are reviewed at regular, semi-annual Committee meetings.

In 1999, the Committee reviewed notifications covering periods ranging as far back as that covered by the initial 1995 notifications. However, the bulk of its review work was focused on the 1998 new and full notifications, and updates submitted for 1997 and 1999. In the table which follows, we have listed the 36 WTO Members (counting the EU and its 15 member states as one) whose notifications were reviewed by the Subsidies Committee in 1999, indicating the annual reporting period to which the reviewed notifications relate.

WTO SUBSIDY NOTIFICATIONS REVIEWED IN 1999

WTO MEMBER	1995 Full Notification	1996 Update	1997 Update	1998 Full Notification	1999 Update
Argentina				X	X
Benin				X	
Canada				X	
Chile				X	
Costa Rica				X	
Cyprus			X		
Dominica				X	
Ecuador				X	
Egypt				X	
EU			X	X	
Gambia				X	X
Ghana				X	
Guatemala				X	X
Hong Kong, China				X	X
Iceland				X	X
India				X	
Japan				X	X
Korea				X	X
Latvia				X	
Liechtenstein				X	X
Mexico				X	
Namibia	X	X	X	X	X
New Zealand				X	
Norway				X	
Panama				X	
Paraguay				X	
Poland				X	
Qatar				X	

St. Kitts & Nevis				X	
Singapore				X	X
Slovenia				X	
Switzerland				X	X
Thailand				X	
Turkey				X	
United States				X	
Zimbabwe				X	

In accordance with special procedures agreed upon by the Committee for the review of 1998 new and full subsidy notifications, the Committee held two special meetings last year – in May and November – to review those 1998 notifications that had been submitted, translated and circulated to Members at least 19 weeks before the special meetings in order to provide sufficient time for an exchange of written questions and answers in advance of each meeting. This procedure was designed to permit the bulk of the discussion at each meeting to focus on follow-up questioning and allow for a freer exchange of information and views.

As has been the case in previous years, in 1999, the Committee continued to struggle with the problem of timely compliance with the notification requirements. Developing countries increasingly complained of the technical difficulty and administrative burden of the notification requirement, with some still not having made a notification since entry into force of the Agreement. However, as we noted in last year's report, the situation generally remains very much one of a "half-empty, half-full glass." As compared with the pre-1995 experience of notifications under GATT Article XVI and the Tokyo Round Subsidies Code, with the WTO requirements, we have achieved significantly greater transparency as concerns the number of programs notified, the quality of information supplied and the coverage of major trading nations. Yet, many Members remain in arrears and the annual deadline of June 30 is routinely missed by the vast majority of Members. As of January 11, 2000, using the most recent information provided by the WTO, out of a now total membership of 135, only 37 new and full notifications for 1998 and 18 updating notifications for 1999 had been submitted.

This situation underscores the need not only for better compliance, but also for improvements to the notification process itself, as the United States has long advocated and specifically called for in the preparatory process for the third WTO Ministerial meeting. In this regard, in 1999, the Subsidies Committee considered a proposal of the EU that new and full notifications be made biennially rather than triennially, and that updating notifications be eliminated. Whereas many delegations expressed interest in or support for this proposal, and none rejected it, a number of developing countries requested additional time to study the idea and suggested that it might be modified to provide developing countries with less onerous requirements than those applicable to developed countries. The

Committee will continue to consider this and other proposals for streamlining the notification process in 2000; the United States has indicated its support for proceeding along these lines based on the principle of lessening administrative burdens for all WTO Members without sacrificing the substance of the transparency requirement.

In terms of other notification-related work in 2000, the Subsidies Committee will continue its review of 1998 full notifications and 1999 and 2000 updates in the context of its two regular meetings this year.[10] We will continue to ensure that the United States plays a leading role in the examination and discussion of notifications. The Administration remains committed to the ongoing improvement in, and transparency of, the WTO's system of subsidy notification and review.

3. Areas of Focus in 2000

After five years of experience, we now have a better understanding of how well the Subsidies Agreement operates and have identified a number of areas which deserve attention – or greater attention – if the Agreement is to retain or strengthen its credibility and serve the interests of all Members, including the United States. First, as noted above, the United States will continue to work with others in an effort to reach agreement on ways to streamline the burdens of notification without taking away from the substantive benefits of that obligation. While there may well be scope for considering less burdensome requirements for those which face extraordinary logistical and resource challenges, as a general rule, rationalization of the notification procedures should work to the benefit of all WTO Members and add to – not detract from – the objective of greater transparency.

Second, we will continue to pursue the fisheries subsidies issue in the WTO, in whatever forum may be most appropriate. We also intend to continue our efforts to identify and pursue further opportunities in other areas where strengthened subsidies disciplines can yield trade and environmental benefits.

Third, as regards the various implementation concerns of developing countries, the United States agrees that the Committee should assume a greater and more focused role in addressing the variety of pending, and impending, implementation issues. Among these,

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[10] We hope to submit in the near future the United States' 1999 update notification, which has been delayed as a result of work associated with preparing for and hosting the 1999 WTO Ministerial, as well as the need to include updated information about measures at the sub-federal level. As noted in last year's report, the 1998 U.S. notification included for the first time information about more than 200 measures maintained by U.S. states. In the 1999 update, we will continue to broaden the scope of our reporting, including for the first time extensive information about U.S. subsidies to the fisheries sector – information that we have identified in support of multilateral efforts noted above to develop improved disciplines on environmentally damaging subsidies in that sector.

in our view, are certain leading examples.

< *IMPLEMENTATION OF ARTICLE 27.3:* On January 1, 2000, the phase-out period ended for all developing countries but the least-developed with respect to "subsidies contingent . . . upon the use of domestic over imported goods," measures which are prohibited under Article 3.1(b) of the Agreement. Without prejudice to any Member's dispute settlement rights, the United States believes that the Committee should monitor Members' implementation efforts in order to ensure compliance with this obligation.

< *IMPLEMENTATION OF ARTICLE 27.2/27.4:* In the course of the past year, many developing countries have raised concerns about their ability to meet the transitional obligations in various WTO Agreements by the prescribed deadlines. Under the Subsidies Agreement, the transition period for most developing countries to phase out their export subsidies expires on January 1, 2003. Although the United States and other Members have asked certain developing countries to report on the status of their phase-out plans during the review of general subsidy notifications under Article 26, little information has typically been supplied in response. Notwithstanding that the deadline is roughly three years away, and individual requests for extension need not be made until January 1, 2002, the Agreement does prescribe that these subsidies are to be phased out "in a progressive manner" and within a shorter period where "the use of such . . . subsidies is inconsistent with [a country's] development needs." Given this, there are reasonable grounds for the Committee to consider this year creating a special reporting and monitoring process to facilitate these phase-outs.

< *ARTICLE 27.6 REVIEW*: The Subsidies Agreement provides that a developing country which has reached 3.25% of world trade in a given product over two consecutive years must accelerate the phase-out of its export subsidies on that product. The product scope is defined as a section heading of the Harmonized System nomenclature, and application of this provision can be triggered either by a notification made by the developing country or a computation done by the WTO Secretariat at the request of another Member. Pursuant to Article 27.6 of the Agreement, the Subsidies Committee began reviewing the operation of this provision at the end of last year. Although the provisions have yet to be invoked, the United States believes that a number of issues relating to the scope, structure and likely operation of these provisions are topics worthy of more rigorous consideration.

< *OPERATION OF ANNEX VII:* As explained earlier, Annex VII to the Agreement identifies two groups of the poorest developing countries – (i) the least developed countries as designated by the United Nations and (ii) certain other specifically named countries whose annual GNP per capita was below $1000 at the conclusion of the Uruguay Round negotiations – which receive treatment more generous than

that received by other developing countries with respect to both export subsidy obligations and the application of CVD rules. Over the past year, a number of developing countries have raised concerns about the scope and operation of Annex VII. While there is no justification for arbitrarily expanding the scope of this Annex, in terms of either countries covered or the exceptions provided from normal Agreement rules and disciplines, some legitimate questions have been raised about the manner in which Annex VII (as it is currently written) may have operated or been interpreted. We agree that the Committee could profitably review the status and operation of this Annex, with the possibility of drawing up recommendations for improvements and clarifications should any be identified.

C. Monitoring Subsidy Practices and Increasing Awareness of WTO Subsidy Disciplines

The strong enforcement of the Subsidies Agreement is a top priority for USTR and Commerce. To this end, for the third year in a row, Commerce has committed additional personnel and resources to the Subsidies Enforcement Office to expand its effectiveness. The SEO's leading mission is to examine subsidy complaints and concerns raised by U.S. exporters and to monitor foreign subsidy practices to determine whether they are impeding U.S. exports and are inconsistent with the Subsidies Agreement.

SEO staff have continued to increase awareness of the resources available to the U.S. trading community in combating unfair competition in foreign markets due to subsidization. To provide this assistance in the most effective and efficient manner, SEO personnel have focused on developing and analyzing information about subsidies and integrating other government resources into this process. We also have continued our efforts to make available through the Internet all publicly available subsidy information collected. Each of these activities is described in more detail below.

1. *Enforcement Counseling*

On a regular basis, USTR and Commerce SEO staff handle inquiries and meet with representatives of U.S. industries who are concerned with the subsidization of foreign competitors. As a result of this counseling, we are currently working with various U.S. industries on several potential WTO subsidy cases.

The type of information provided by U.S. companies to the agencies through these contacts varies greatly. In many instances, the first contact that a U.S. exporter makes with government officials regarding a subsidy problem is by phone or letter. Initially, we provide an overview of the Subsidies Agreement and explain U.S. rights under this Agreement. We then discuss in detail the subsidy problem the exporter confronts and gather as much information as possible about the subsidy practice and how it has affected the exporter's

ability to sell in the U.S. or foreign markets. Following this, we determine what further information is needed and the best way to go about collecting it. Typically, the firm or industry in question is itself the best source of information concerning the harm resulting from the subsidization. This information is critical to support a claim of "serious prejudice."[11] While the U.S. exporter is assembling such serious prejudice information, SEO staff begin the process of researching the subsidy practice at issue to determine the legal framework under which the foreign government is offering the assistance and whether other U.S. exporters have been facing similar problems.

In order to develop as much information as possible about the subsidy practice, we draw on the following resources: reviewing information contained in the Commerce Subsidies Library, researching Internet sites, discussing the issue with Commerce offices that routinely collect information on specific country and industry practices, and contacting Commerce's Advocacy Center[12] to learn whether any U.S. exporters have reported facing similar problems. After this initial research, we then contact the U.S. embassy in the appropriate foreign country to discuss our findings and determine whether there is further information that could be provided. Our counterparts in other governments also may be contacted to ascertain whether they have had complaints from their exporters about the same subsidy practice in a third country.

Once sufficient, relevant information has been gathered to permit the matter to be reliably evaluated, USTR and Commerce will confer with an interagency team to determine the most effective way to proceed. Where appropriate, we may also seek public comment and/or consult with representatives of U.S. state and local governments. In many cases, raising the matter with the foreign government authorities through informal contacts, formal bilateral meetings and/or in the WTO Subsidies Committee discussions can promote more speedy and practical solutions than resorting to WTO dispute settlement. These other approaches also may permit us to uncover additional information or to improve our understanding of the practice, which can affect the decision concerning the appropriate next steps to take, including the possibility of pursuing the problem on grounds other than those

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[11] In order for subsidies to be actionable, other than prohibited subsidies, they must be specific (*e.g.*, provided to a single firm or industry or a group thereof) and cause adverse effects to the interests of another member. Adverse trade effects can include (1) material injury, or the threat thereof, as in CVD proceedings, (2) the nullification or impairment of benefits accruing directly or indirectly to another WTO Member under the GATT 1994, and (3) the displacement or impeding of sales or significant price undercutting, price suppression or price depression in so-called "serious prejudice" disputes brought to the WTO. Because serious prejudice can arise in any market affected by an actionable subsidy (whether in an importing country, the subsidizing country, or a third-country market), it is the standard most often used to challenge subsidized competition in the subsidizing country or third-country markets.

[12] The Advocacy Center helps U.S. exporters seek contracts abroad on an equal footing with foreign government-backed competitors.

provided for under WTO subsidy rules. We have found that it is frequently advantageous to pursue resolution of these problems through a combination of informal and formal contacts, including, where warranted, dispute settlement action in the WTO.

2. *Integration of Government Resources*

One of the most important aspects of increasing the effectiveness of the SEO and subsidy enforcement generally is to ensure that government personnel who have daily contact with the U.S. exporting community, both here in the United States and abroad, are aware of the resources and services available regarding subsidy enforcement efforts. Within Commerce, it is the responsibility of the U.S. and Foreign Commercial Service (US&FCS) to counsel U.S. companies both here and abroad. Therefore, formal briefings are held with US&FCS officers when they are in Washington to explain to them the type of information and services available through the SEO. In addition to providing the officers with information on SEO activities, several copies of informational sheets are provided to take back to their posts to inform other US&FCS officers and U.S. business visitors to the post about resources available through the SEO. (See Attachment 1.) These briefings also have become a source of information concerning the types of subsidy problems U.S. companies are facing in the host countries of the US&FCS officers.

SEO personnel also have participated in special conferences held for senior commercial officers and training sessions held for foreign service national employees[6] in Washington. These meetings offer a unique opportunity to provide information on the resources available through the SEO to a large number of government officials who have daily interaction with U.S. companies.

As part of the strategy to involve U.S. government personnel overseas in subsidy enforcement activities, SEO staff work with officials at the Department of State to include foreign service economic officers in this effort, pursuant to the statutory mandate to secure the cooperation of other federal agencies as provided for in section 281(g) of the URAA. Collaboration between the Departments in developing and sharing information concerning foreign government subsidy practices and the administration of foreign governments' unfair trade laws[7] is an important aspect of this effort. To this end, USTR and SEO personnel

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[6] Foreign service nationals are professional employees of U.S. embassies and consulates who are natives of the country in which the embassies are located. These employees assist foreign service and US&FCS officers with their assigned duties.

[7] An important factor in a U.S. company's ability to do business in any given market is the manner by which the foreign government administers its unfair trade laws and, in particular, its CVD and antidumping (AD) laws. Import Administration monitors these foreign AD and CVD actions involving U.S. companies to ensure that the countries are conducting these investigations in accordance with their international obligations.

have been training State Department economic officers in identifying and evaluating foreign subsidy practices and in monitoring unfair trade actions involving U.S. companies. State Department economic officers then provide relevant information to Commerce, USTR and the interagency team on a regular basis.

To reinforce the priority the Administration attaches to effective enforcement, SEO staff met with foreign service officers at several U.S. embassies and consulates in 1999. During these meetings, we provided both US&FCS and economic officers with information on WTO subsidies disciplines and the resources available through the SEO. The US&FCS and economic officers each provide a unique perspective to the subsidy enforcement efforts. The US&FCS officers have daily contact with the U.S. exporting community and, therefore, are directly aware of the problems facing the companies. The economic officers are informed about the types of subsidy programs being administered, implemented or contemplated by the host governments. Both types of information are critical for the SEO to be effective. The information gathered has proven to be very useful in determining the most appropriate areas in which to focus our efforts to assist U.S. exporters. SEO staff will be maintaining and extending these contacts and outreach efforts throughout 2000.

Finally, SEO personnel have been working very closely with other offices within Commerce's International Trade Administration (ITA) to ensure that they are fully aware of our subsidy enforcement efforts and that the SEO is familiar with the information on subsidies that these offices routinely collect in the course of their own work. Chief among our growing contacts are the country- and industry-specific desk officers, the Advocacy Center, the Trade Compliance Center[8] and the Compliance Coordinators group. The Compliance Coordinators group is comprised of representatives from all of ITA's units (Market Access and Compliance, Trade Development, Import Administration, and US&FCS) and the Patent and Trademark Office, and serves as the central coordinating point for ITA's market access and agreement compliance activities. The group meets regularly to share information on trade compliance and market access issues that may be common across regions or industrial sectors, and works to resolve these issues by drawing upon the full range of expertise available within ITA.

Our work with the Advocacy Center provides a good example of the collaborative effort within ITA. The Advocacy Center assists U.S. exporters seeking government contracts abroad by providing U.S. government advocacy on behalf of the U.S. company when foreign competitors bidding on the same contract enjoy support from their governments. At times, this foreign government support may be in the form of subsidies. When the Advocacy Center receives a call from a U.S. company concerning possible

[8] The Trade Compliance Center monitors compliance with all international commercial agreements to which the United States is a signatory.

foreign government subsidization, they contact the SEO and provide all of the relevant information. In addition, the Advocacy Center has connected the SEO to its computer database. This allows us to review information gathered by the Center to determine whether U.S. exporters' access to foreign contracts is being impeded by government practices which may be actionable under subsidy rules.

3. *Monitoring Foreign Subsidy Practices*

As mentioned above, in addition to monitoring activities from Washington, SEO staff trained personnel in U.S. diplomatic posts overseas to identify potential subsidies that could lead to unfair trade. At different times throughout the last year, SEO staff traveled to several countries to coordinate our monitoring efforts with US&FCS officers and State Department economic officers and to provide an overview of the Subsidies Agreement, applicable U.S. trade laws and practical information that could be used to monitor government practices and determine whether they may constitute actionable subsidies. Regular reporting mechanisms were established between the posts and the SEO. SEO staff also examined the resources available at the posts and evaluated all collected information regarding potential subsidies.

Commerce has continued its efforts to develop a comprehensive database of foreign government practices that are potentially actionable under the Subsidies Agreement. As mentioned in last year's report, the SEO has been focusing its efforts on making this information available through the Internet. By making this information available at a single site, U.S. exporters are able to learn quickly about the remedies available to them under the Subsidies Agreement and the information necessary to develop a CVD case or a WTO subsidies complaint. In addition, by integrating all of the subsidy information developed through years of conducting CVD investigations, the information is now available in a format which USTR and Commerce can easily use to check the WTO notifications of other countries and ensure that they are complete and accurate. As discussed in another section of this report, the notification process is an important aspect of our subsidy enforcement efforts.

The past year has been one of tremendous progress in our development of the electronic subsidies database. Since last year, the SEO has more than doubled the number of countries listed on the electronic subsidies enforcement library internet site, which can be found at www.ita.doc.gov/import_admin/records/esel. That means that we have added hundreds more foreign subsidy programs which have been investigated in our countervailing duty cases. In addition, we have been able to update many of the country listings which were already included on the site. Since our countervailing duty case work is ongoing, we will be able to continually update our site in order to keep it current. In addition, we will continue to expand the depth and breadth of the site by eventually including all cases dating back to 1980. Attachment 2 shows the layout of the library and includes the list of countries which are now available to research.

In addition to the information discussed above, the home page also provides (1) all derestricted WTO subsidy notifications, listed by country, and (2) easily accessible links to other useful U.S. and foreign government cites, such as USTR, the U.S. Ex-Im Bank, the IMF, the WTO (which maintains databases of Members' CVD actions as well as their subsidy notifications to the WTO), the Canadian and Mexican government trade agencies, and NAFTA. The SEO will be working over the coming year to increase the number of U.S. government and foreign links provided. In addition, links to Commerce personnel who can provide additional guidance are supplied. The Internet provides an easy and efficient avenue to reach U.S. businesses and furnish them with information previously available only in person in Washington.

Another aspect of our monitoring activity is the tracking of numerous trade journals and the news and business sources of our major trading partners. On a daily basis, SEO personnel monitor cable traffic, Foreign Broadcast Information Service (FBIS) reports, trade journals and more than 35 news and business sources from various countries. Daily summaries of subsidy-related articles are compiled for Asia, the Pacific, Europe and the Americas. The summaries allow us to continually monitor activities in these areas of the world and to share timely information on specific subsidy issues with other U.S. government offices or concerned industry representatives and other members of the public. Through this process, the Administration has been able to identify a number of areas where subsidies may have been or will be provided by governments to spur production or exports. As discussed above, once such subsidy practices are discovered, Commerce and USTR pursue resolution of these issues through a combination of informal and formal contacts, including, where warranted, dispute settlement action in the WTO.

D. Responding to the U.S. Steel Crisis

One additional focus of subsidies enforcement activity during this past year has been to minimize the adverse effects of recent foreign economic crises on the U.S. economy. One U.S. industry that experienced severe import competition within the past year was the steel industry. The global financial crises, which were discussed in detail in last year's report, resulted in a steep drop in demand for steel in Asia and other markets in 1998, leading many steel producing countries such as Japan and Russia to aggressively target the strong U.S. market. Overall imports of Japanese steel in 1998 increased by 162 percent compared to 1997, with imports of some products, such as hot-rolled and heavy structural steel, up by 381 percent and 2,065 percent, respectively. U.S. steel imports from Russia increased 59 percent in 1998 compared to 1997, with imports of Russian hot-rolled steel increasing 93 percent. As a result, U.S. steel imports surged to record levels in 1998. In a year when U.S. demand rose 5.6 percent, imports surged 33 percent and import penetration rose from 23 percent to 37 percent by year's end. The flood of imports caused capacity utilization in the United States to drop from above 90 percent in early 1998 to

below 75 percent by the end of that year. Although steel imports declined in 1999, the record import levels of late 1998 and early 1999 depressed prices and were the dominant factor in the substantial losses sustained by the U.S. industry in late 1998 and the first three quarters of 1999. The impact of these surges on the U.S. market was strong. Only in the last few months of 1999 has the U.S. industry begun to show signs of recovery.

The Administration responded quickly to the crisis, taking vigorous and forceful action to ensure that the U.S. steel industry and American steelworkers were not harmed by a flood of unfairly traded steel imports. One aspect of the Administration's response to this crisis was through increased identification and surveillance of foreign subsidy practices that may distort trade and exacerbate trade frictions. The President's Steel Action Plan, announced in January 1999, and the follow-up Steel Action Program announced in August, outlined this and other steps the Administration would take to identify and address issues that threatened the health and vitality of the U.S. steel industry, U.S. steel workers, and the U.S. economy. In addition to enhanced subsidy monitoring activities, elements of the plans included bilateral initiatives, enhanced trade law enforcement, increased import monitoring, and an in-depth study and report of subsidies and market-distorting trade barriers for steel and steel inputs, all of which are being implemented by Commerce and USTR.

Commerce's SEO is directly responsible for implementing several aspects of the President's plans. As described above, the SEO has worked extensively over the last few years to develop an integrated system of resources throughout the government to allow it to respond quickly to world crises as they arise. This system proved invaluable when the steel crisis arose and the SEO quickly became a cornerstone of the Administration's efforts. SEO staff worked closely with other agencies to develop innovative approaches to responding to the import surges; many of these initiatives were later incorporated into the two White House steel action programs.

A key component of the Steel Program is an examination of subsidies and market distorting trade barriers for steel and steel inputs. The SEO is charged with conducting an extensive examination of subsidies and other government actions which have led to market-distorting trade barriers in major steel producing countries. Some of the areas being reviewed are government involvement in the sales of bankrupt or non-viable companies, privatization of government-owned companies, government intervention in the banking and steel sectors and restructuring efforts in the financial and corporate areas. A report is being prepared that outlines the results of our examination and offers recommendations, developed in coordination with USTR, on the most effective means to address these subsidies and market-distorting trade barriers. This report is expected to be issued early this year.

Another aspect of the Program is enhanced import monitoring. In 1999, the SEO improved and expanded the steel import monitoring program that it had developed to provide Commerce and the Administration with an early warning system on potential import

surges of unfairly traded steel imports. Under the program, Commerce monitors imports of steel products for potential surges and price movements that may indicate unfair trade. The program has proven very effective in providing the Administration with the key steel trade information necessary to evaluate and respond to the steel crisis and was greatly expanded in 1999, as part of the President's Steel Action Program, to cover all steel mill products from all steel exporting countries. Monitoring was also expanded to examine certain steel inputs such as iron ore and coke, as well as certain downstream products such as wire rope and wire strand.

In order to provide both the Administration and the industry with the most timely and accurate data on steel imports, the SEO worked with Census and OMB to obtain an unprecedented agreement under which preliminary monthly steel import statistics are released approximately three to four weeks before the release of the official monthly import statistics. The early release of these statistics, which began in January 1999, has greatly improved the ability of both the Administration and the industry to identify and respond to import surges. This agreement required creative thinking on the part of the team to overcome concerns of the statistical community that the early release might compromise the integrity of the official trade data. The early release of steel import statistics, which was set to expire at the end of 1999, has proven so successful that it is being continued for another year.

There are several other important aspects of the Steel Action programs on which both Commerce and USTR are working. For example, the SEO has been working closely with the coke and iron ore industries, which are important suppliers to the steel industry. SEO staff met with these industries and union representatives to discuss the impact of the steel crisis on their industries as well as concerns about specific subsidies provided to their foreign competitors.

A final example of our work in this area is provided by Commerce's interaction with Ex-Im Bank to implement a policy change undertaken by the Bank in early 1999 in recognition of the adverse effect of unfair trade practices on the U.S. economy. Ex-Im Bank provides supplemental commercial financing and guarantees to U.S. exporters. Now, among the factors which the Bank considers in the course of its transaction review process is whether the proposed purchaser is subject to antidumping or countervailing duties with respect to its trade with the United States. If this is the case, Ex-Im Bank will take this into account in exercising discretion to determine whether financing is warranted, unless the financing is justified by extraordinary circumstances. Based in part on information provided by Commerce, there have been instances where financial support was denied. With over 100 antidumping and countervailing duty orders on steel products from a variety of countries, this policy should help to ensure that foreign manufacturers engaged in unfair trade practices do not benefit inappropriately from Ex-Im Bank financing.

E. U.S. Enforcement Activities[9]

The United States pursues enforcement of U.S. rights under the Subsidies Agreement through WTO dispute settlement proceedings, bilateral contacts and other actions. Although any decision to initiate a dispute settlement proceeding must carefully take account of the balance of U.S. interests, the general policy objectives of both the Administration and the Congress are to discourage distortive subsidization and to remedy harm caused to U.S. producers or workers by such subsidies. These objectives are expressed clearly in the URAA, and they provide the context in which potential subsidy enforcement complaints have been, and will continue to be, considered. USTR, with the assistance of experts from Commerce, Agriculture and other agencies, has been actively pursuing a number of WTO disputes. The following summarizes the principal disputes which have been pursued to date by the United States.[10]

Australia: Prohibited Export Subsidies on Automotive Leather

On October 7, 1996, following receipt of a petition filed under Section 301 of the Trade Act of 1974 by the U.S. leather industry, the United States requested consultations with Australia concerning subsidies available to leather producers under Australia's Textile, Clothing and Footwear Import Credit Scheme (TCF scheme) and other subsidies granted or maintained, which are prohibited under Article 3 of the Subsidies Agreement. Generally, the TCF scheme provides credits to eligible companies to obtain import duty reductions that are determined, in part, on the basis of the value of export sales and the extent of Australian value added in the exported product(s). After consultations were held on October 31, 1996, the parties reached a settlement announced on November 25, which included an agreement by Australia to excise automotive leather from eligibility under the TCF scheme (and another export subsidy program) by April 1, 1997.

However, Australia soon thereafter announced a new package of subsidies granted

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[9] Last year's report noted that, for the first time in years, the United States is a defendant in a WTO dispute involving multilateral subsidies disciplines. In light of the importance and outcome thus far of the case brought by the EU against the Foreign Sales Corporation (FSC) provisions of the Internal Revenue Code, we have included a separate discussion in the body of this report on the FSC dispute, even though it obviously is not a U.S. enforcement action. We have also included a summary of another case in which the United States found itself to be a defendant. Although this case deals with U.S. imposition of countervailing duties on imports of steel from the United Kingdom, the conclusions reached by the panel warrant attention for their more general implications for WTO subsidy rules. Finally, two other cases brought by Canada and Brazil against each other's support to their respective aircraft industries also have produced jurisprudence of importance to the meaning and application of WTO subsidy rules. For this reason, we have also included a summary of those cases in this section of the report.

[10] Information about WTO dispute settlement proceedings is available to the public over the Internet at "www.wto.org/wto/dispute/bulletin.htm" and "www.wto.org/wto/dispute/distab.htm".

to the sole Australian exporter of automotive leather, consisting of loans on noncommercial terms and outright grants. On November 10, 1997, the United States requested WTO consultations on the new measures, alleging that they constituted *de facto* export subsidies. A panel was established in June, 1998, and on May 25, 1999, it issued a report finding that Australia had granted $A30 million in prohibited *de facto* export subsidies, but that the loans on noncommercial terms were not export subsidies. The report was adopted by the WTO Dispute Settlement Body (DSB) on June 16, 1999, and Australia was given 90 days to withdraw the prohibited export subsidies. Neither party appealed the report.

In a September 20, 1999, communication to the Chairman of the DSB, Australia claimed to have implemented the Panel recommendation by arranging for the exporter to repay A$8.065 million of the A$30 million grant -- just under 27% -- which Australia contended "covered any remaining inconsistent portion of the grants made under the Grant Contract". At the same time, however, Australia announced that it intended to provide a new, A$13.65 million loan on noncommercial terms to the exporter's parent holding company, effectively reimbursing the leather exporter and its parent for the grant repayment.

On October 4, 1999, the United States requested that the panel review Australia's compliance under Article 21.5 of the Dispute Settlement Understanding (DSU). The United States disagreed with Australia's claim that it had complied with the DSB's recommendation that the subsidy be withdrawn, in that Australia had arranged both for only a modest repayment of the subsidy and for a simultaneous, effective reimbursement of the repayment. To expedite the proceeding, the parties agreed that they would unconditionally accept the review panel's report and that there would be no appeal of that report. Both parties also agreed to cooperate to ensure that the review panel could circulate its report within 90 days of its establishment.

The parties met with the panel on November 23-24, 1999. Australia argued that no repayment of the subsidy was necessary, or, if it was, that the partial repayment it received was sufficient. Australia further argued that the loan subsidy was a separate measure unrelated to the grant repayment. The United States argued that the repayment was insufficient because it did not accurately represent the full prospective portion of the grant. The United States further argued that there had been no repayment at all, because the partial repayment had been reimbursed by the loan subsidy to the exporter's parent company.

In a report dated January 14, 2000, the review panel agreed with the United States that Australia had failed to comply with the recommendations of the DSB that the subsidy be withdrawn. The review panel found that, as claimed by the United States, the loan subsidy had nullified the partial repayment of the subsidy. The review panel further found that, to comply with the DSB's recommendation that this particular grant subsidy be withdrawn, the entire grant, and not just the prospective portion of the grant, had to be repaid. This went beyond the U.S. claim that only the prospective portion had to be repaid.

Canada: Export Subsidies and Tariff-Rate Quotas on Dairy Products

Canada provides subsidies to exporters of dairy products without regard to its Uruguay Round reduction commitment on the quantity of subsidized exports. In addition, Canada maintains a tariff-rate quota on fluid milk under which it only permits the entry of milk in retail-sized containers by Canadian residents for their personal use. Canada claimed that cross-border purchases of milk imported by Canadian consumers fulfill the tariff-rate quota. Contesting that these measures are inconsistent with Canada's obligations under Article II of the GATT 1994, the Agreement on Import Licensing, and Articles 3, 8, 9 and 10 of the Agreement on Agriculture, the United States requested WTO dispute settlement consultations on October 8, 1997. On March 25, 1998, the DSB established a panel to consider the U.S. complaint, as well as a complementary complaint brought by New Zealand.

In April 1999, the WTO panel ruled that Canada's regime to provide milk to exporters for processing at prices which were substantially below the prices charged for such milk when delivered for processing for domestic consumption constitutes an export subsidy. The panel's legal analysis underscored that governments cannot avoid the export subsidy commitments under the Agreement on Agriculture by entrusting authority to quasi-government entities. Along the lines of the definition of a subsidy described in Article 1.1(a)(1)(iv) of the Subsidies Agreement, the panel concluded that when governments delegate powers to such entities and such bodies perform governmental functions, their actions are no less governmental than had the government undertaken the acts. In light of these findings, the Panel also concluded that Canada had violated its export subsidy reduction commitments by exporting a higher volume of subsidized dairy products than is permitted by Canada's obligations under the WTO Agreement on Agriculture. The Panel also found that Canada had improperly imposed a limit on the value of milk that could be imported in any single entry under the relevant tariff-rate quota.

The panel's findings were sustained by the WTO Appellate Body in October 1999 in an appeal initiated by Canada. Following these rulings, the United States and Canada engaged in discussions to reach agreement on the period available to Canada to bring its export subsidy system and tariff-rate quota administration into compliance with its WTO obligations. As the result of an agreement concluded on December 22, Canada will immediately comply with its WTO export subsidy commitments on butter, skimmed milk powder, and an array of other dairy products. Canada also has committed to reducing subsidized cheese exports and is scheduled to be in compliance with its reduction commitments on cheese by August 1, 2000. The necessary regulatory reform of the tariff-rate quota will be accomplished no later than February 1, 2000.

France: Subsidies to Avionics Sector

In December 1997, the European Commission announced its approval of a French government "reimbursable advance" to fund the development by European avionics companies of a new flight management system (FMS) for Airbus aircraft, the development of which the Commission said "would not be possible without the aid." The Commission justified this subsidy on its estimation that a specific U.S. company had a "quasi-monopoly" on sales of FMS for Airbus aircraft and that the French government funding would help reduce Airbus' dependence on the U.S. supplier.

On May 21, 1999, the United States requested consultations with the European Commission and France regarding this subsidy. Consultations were held on June 30, 1999, in Geneva. After consultation with the interested U.S. industry, the United States has determined to refrain from requesting the establishment of a dispute settlement panel at this time.

Spain: Subsidies to Specialty Steel

On November 14, 1996, eleven member companies of the "Specialty Steel Industry of North America" (SSINA) requested that the United States seek WTO dispute settlement consultations with the EU with respect to a provision of Spanish tax law which permits deductions from corporate income tax for 25 percent of the value of foreign investments that are "directly related to exporting goods and services." The companies alleged that the Spanish specialty steel producer, Acerinox, has benefitted from these tax concessions in exporting semi-finished stainless steel feedstock to its subsidiaries in the United States and elsewhere.

Prior to receiving the industry's request, the United States had posed questions about this program during the course of the Subsidies Committee's review of the EU's 1995 subsidies notification and expressed concerns to EU officials informally and during Committee discussions about the compatibility of this measure with the Agreement's prohibition of export subsidies. Following additional exchanges with both the EU and the domestic industry, on July 30, 1997, the competition authorities of the European Commission announced the initiation of a formal investigation to determine the compatibility of the tax provision with the EU's state aids rules in force for coal and steel products. In a communication published on October 31, 1997, in the Official Journal of the European Communities, the competition authorities issued a preliminary finding that the tax scheme appears to qualify as state aid that is inconsistent with the applicable state aids rules.

In December 1998, USTR formally reiterated to the European Commission its interest in the EU's progress in resolving this matter, and it has followed up with informal inquiries to EU trade and competition officials since then. In February of last year, the European Commission provided a letter in response to our December 1998 inquiry, reiterating its view that the Spanish measure does not constitute an export subsidy within the meaning of WTO rules. However, the Commission also explained that the internal state

aid investigation "has been a particularly complicated case because of the number of interested parties involved, and because of the need to analyze the [Spanish] . . . tax exemption in the context of similar aid schemes linked to foreign investment granted by other Member States of the Community."

Although we recognize that the use of this Spanish tax provision may have contributed to the expansion of Acerinox's facility in Kentucky, and brought about economic development benefits for that region, the Administration remains interested in the ultimate disposition of these practices in the EU. We recently have renewed our inquiries about the status of the European Commission's investigation, and will continue to closely monitor developments.

Canada & Brazil: Export Financing for and Measures Affecting the Export of Civil Aircraft

Beginning in 1996, Canada requested consultations with Brazil concerning "certain export subsidies" granted under its PROEX export financing program to foreign purchasers of Brazil's EMBRAER aircraft. Later, in 1997, Brazil brought a separate dispute against certain alleged subsidies granted by the Canadian federal government or its provinces that support the export of civilian aircraft from Canada. In 1998, both of these disputes were referred to panels. Final reports were issued by the two panels in March 1999, and appellate decisions in both cases emerged in August of last year.

The panel reviewing the Canadian measures affecting the export of civilian aircraft found evidence of both a *de jure* and a *de facto* export subsidy. In that dispute, Brazil alleged that several Canadian measures available to the civilian aircraft industry constituted prohibited export subsidies. The panel found that two programs - the Canada Account and Technology Partnerships Canada (TPC) - constituted prohibited export subsidies. The panel determined that the Canada Account program provided export credits at below-market rates to its domestic civilian aircraft industry and concluded that such credits were contingent in law on export performance.

With respect to the TPC program, the panel's analysis and findings served to clarify several previously ambiguous aspects of the definition of a *de facto* export subsidy. Brazil alleged that this subsidy provided royalty-based financing at below-market rates of return for investments in projects that result in a high technology product for sale in export markets. The panel found that "TPC funding in the regional aircraft sector is expressly designed and structured to generate sales of particular products, and that the Canadian Government expressly takes into account, and attached considerable importance to, the proportion of those sales that will be for export, when making TPC contributions in the regional aircraft sector." The panel went on to conclude that "these facts demonstrate that TPC assistance to the Canadian regional aircraft industry would not have been granted but for some expectation of exportation or export earnings."

Significantly, in making its determination, the panel rejected an argument from Canada that the export orientation of the industry should not be taken into consideration. The panel found that this factor, while not dispositive, nevertheless was one of several that should be considered. In addition, the panel rejected the Canadian argument that, in order for a subsidy to be contingent upon export, there must be some form of penalty for not realizing increased export sales. The panel found this argument to be insufficient to demonstrate that a subsidy would not have been granted but for anticipated exportation or export earnings.

In a second important finding, the panel agreed with Brazil and the United States that the proper approach for determining the existence of a subsidy is to determine whether the recipient received something on better-than-market terms. Canada (echoed by the EU) had argued that a government practice is a subsidy only if it involves a cost to the government. The "cost to government" vs. "benefit to recipient" issue had been a source of disagreement between the United States and its trading partners for many years, and the panel's decision confirms the United States' longstanding views on this fundamental issue for effective WTO subsidy rules.

The Appellate Body upheld the panel's determination on both of these important issues.

The dispute brought by Canada against Brazil's export financing program for civil aircraft addressed several issues relating to the proper interpretation of item (k) of Annex I to the Agreement and the applicability of the export subsidy prohibition to developing countries. Under Article 27 of the Subsidies Agreement, the prohibition against the provision of export subsidies does not apply to developing countries, such as Brazil, for a period of eight years, as long as the country in question has met several conditions. These conditions include the phase out of the export subsidies over the eight-year period and ensuring that the level of export subsidies does not increase during that period.

In this case, Canada alleged that Brazil's PROEX export financing program (insofar as it applies to civil aircraft) is subject to the prohibition on the provision of export subsidies because Brazil has not adhered to the necessary conditions. The panel ruled that Brazil has not been phasing out its export subsidies over the eight-year period since entry into force of the Subsidies Agreement, and that it has increased the level of its export subsidies. Consequently, the panel found that because Brazil has failed to comply with the conditions of Article 27.4, the prohibition of export subsidies is applicable to Brazil. Accordingly, payments under PROEX were found to constitute prohibited export subsidies. The Appellate Body affirmed the panel's decision. The panel's and Appellate Body's findings in this dispute are significant because they suggest that the conditions for enjoying the special and differential treatment accorded developing countries under the Subsidies Agreement will be rigorously applied.

United States: Foreign Sales Corporation Rules

In November 1997, the EU requested consultations with the United States with respect to the Foreign Sales Corporation (FSC) provisions of U.S. tax law (sections 921-927 of the Internal Revenue Code), claiming that these rules constituted a subsidy inconsistent with U.S. obligations under both the WTO Subsidies and Agriculture Agreements. The FSC provisions provide exporters with a partial tax exemption on certain foreign income of FSCs, which are foreign subsidiaries of U.S. companies. Three rounds of consultations were held in December 1997, and in February and April 1998. A dispute settlement panel was formed in September 1998 and issued its report on October 8, 1999, finding that the tax exemption conferred by the FSC provisions constitutes a prohibited export subsidy under the WTO Subsidies Agreement. The panel also found that the tax exemption constitutes an export subsidy under the Agriculture Agreement, thereby resulting in a violation of U.S. obligations under that Agreement. The panel did not address the EU's claims that (1) the FSC administrative pricing rules constitute a prohibited export subsidy in their own right; and (2) the FSC tax exemption and administrative pricing rules constitute prohibited import substitution subsidies under the Subsidies Agreement. With respect to the panel's findings under the Subsidies Agreement, the panel recommended that the United States withdraw the FSC tax exemption "with effect from" October 1, 2000.

The FSC was introduced in the early 1980s after its predecessor provisions, the Domestic International Sales Corporation (DISC) rules, were found to be a prohibited export subsidy under GATT subsidy rules. In adopting the ruling against the DISC and certain GATT-illegal European tax provisions, the GATT Council expressed an understanding (now also reflected in the WTO Subsidies Agreement) encompassing the following principles:

- economic processes (including transactions involving exported goods) located outside the territorial limits of the exporting country need not be subject to taxation;
- such processes should not be regarded as export activities in terms of GATT Article XVI:4 (which essentially prohibits export subsidies on sales of industrial goods);
- arm's length pricing should be observed for tax purposes in transactions between exporting enterprises and related foreign buyers; and
- Article XVI:4 does not prohibit the adoption of measures to avoid double taxation of foreign source income.

The FSC rules permit a portion of income generated outside the territorial limits of the United States to be exempt from U.S. income tax. To qualify for this exemption, the FSC must have a foreign presence, meet certain management and economic process requirements addressing both the extent and nature of the sales activities undertaken

abroad as well as requiring that a minimum level of direct costs be incurred abroad with respect to certain sales activities (*e.g.*, advertising, order processing, etc.). If export property is sold to a FSC by a related person (or a commission is paid by a related person to a FSC with respect to export property), the taxable income of the FSC and the related person is determined based on transfer pricing rules designed to conform to the arm's length pricing standard in the Subsidies Agreement. (Another qualification limits the tax exemption to a portion of export income resulting from the sale of products of which at least 50 percent of the "fair market value" is attributable to domestic content.)

The EU contended that the FSC was a subsidy because it involved foregone government revenue which provided the taxpaying firm a financial benefit in the form of a lower corporate tax burden than would normally be the case in the context of the overall U.S. income tax regime. It also argued that the FSC's administrative pricing rules provided an additional "benefit" in the form of reduced costs resulting from the administrative convenience and the allegedly more generous manner in which such rules allocated income between the FSC and the parent. In addition, the EU stated that because receipt of the alleged subsidy was tied to export income and involved a domestic content requirement, the provisions constituted both an export subsidy and an import substitution subsidy, which are prohibited by the WTO Subsidies Agreement. Again, on subsidy grounds, the EU claimed that the United States failed to account for the FSC in fulfilling its Agriculture Agreement obligations to reduce export subsidy levels for agricultural goods.

The U.S. position is that the FSC is not a subsidy because it conforms to principles reached in the 1981 GATT Council Understanding that settled the DISC dispute, and that those principles were brought forward into the WTO legal framework, both through incorporation and in the express language of footnote 59 to item (e) of Annex I to the Subsidies Agreement. In addition, the United States has contended that, in the aggregate, the FSC's administrative pricing rules reasonably satisfy the arm's length standard prescribed by the WTO.

In its ruling, the panel basically disagreed with the U.S. position that the principles reflected in the 1981 Council Understanding were fully brought forward into the new WTO legal framework. As a result, the panel found that those principles could not trump what it viewed as the clear language of Article 1 of the Subsidies Agreement concerning the definition of a subsidy. In the panel's view, in the case of a tax measure, a subsidy exists if "but for" the measure, a firm's tax liability would be increased. Applying this standard to the FSC provisions, the panel concluded that those provisions shielded export-related income from tax. As such, it found the provisions to be a subsidy "contingent on export performance." The panel acknowledged footnote 59, but did not find that it modified the essential thrust of item (e), which brands as an export subsidy the full or partial exemption related to exports of direct taxes paid by enterprises. The panel declined, on grounds of judicial economy, to rule on the FSC administrative pricing rules or the allegation that the FSC constitutes an import substitution subsidy.

Both sides appealed aspects of the panel's ruling; the WTO Appellate Body's ruling is expected by late February, 2000.

United States: Imposition of Countervailing Duties on U.S. Imports of Lead Bar from the United Kingdom

On June 30, 1998, the EU requested consultations with the United States with regard to the imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel (lead bar) from the United Kingdom (U.K.). The EU contended that Commerce had imposed countervailing duties on two private successor companies to government-owned British Steel Corporation (BSC) based on a methodology that attributed a portion of the massive subsidies originally received by BSC prior to its privatization in 1988 to the two successor companies. The EU alleged violations of Articles 1.1(b), 10, 14 and 19.4 of the Subsidies Agreement. Consultations were held on July 29, 1998. The EU then requested that the DSB establish a panel to hear this dispute on January 14, 1999, and a panel was established by the DSB at its meeting on February 17, 1999. Brazil and Mexico both intervened as third parties. The panel issued its report in this case to all WTO Members on December 23, 1999.

At the center of this dispute was the approach taken under Commerce's methodology for handling "pre-privatization" subsidies. Under that approach, Commerce first measures the benefit flowing from the subsidies, based on circumstances at the time of the bestowal of those subsidies (which is prior to the privatization), and then allocates (or divides) the measured benefit over a period of years. (In other words, Commerce, like other WTO Members, presumes that subsidies will continue to provide a benefit to the recipient company's productive operations for a period of years.) For the years after the privatization, Commerce does not re-measure the benefit that it originally found, but it does further allocate this benefit between the selling government and the privatized company under a formula that takes into account, among other things, the purchase price for the government-owned company. The amount allocated to the government is considered a repayment of prior subsidies, and is no longer countervailable, while the amount allocated to the privatized company does remain countervailable.

In its report, the panel found that Commerce had imposed countervailing duties on U.S. imports from the two successor privatized companies in violation of Articles 1.1(b), 10, 14 and 19.4 of the Agreement. In reaching its decision, the panel disagreed with how Commerce accounts for the privatization of a government-owned company and insisted that an investigating authority (such as Commerce) must re-measure the benefit of pre-privatization subsidies based on circumstances at the time of the privatization.

The panel explained that, in order to impose countervailing duties, the investigating authority must demonstrate that the producer or exporter of the particular imports continues

to enjoy the benefit of a subsidy (*i.e.*, as in a competitive advantage) at the time of the production or exportation of those goods. According to the panel, this means that, where a subsidized, government-owned company has been privatized, the investigating authority must analyze the terms of the transaction and demonstrate, by positive evidence, that the successor privatized company is benefitting from the subsidies previously bestowed on the government-owned company before it may impose countervailing duties. The panel further explained that the successor privatized company should not be considered as having realized any benefit from pre-privatization subsidies if fair market value was paid for the government-owned company; in such situations, the investigating authority is precluded from imposing any countervailing duties. Finally, in applying these principles to the facts of the BSC privatization, the panel found that none of the benefit from the pre-privatization subsidies could be attributed to the two successor, privatized companies.

The panel's reasoning is essentially the same as the reasoning used by the U.S. Court of International Trade's 1994 ruling in *Saarstahl AG v. United States*, 858 F. Supp. 187, 193 (CIT 1994) ("*Saarstahl I*"), a decision which was later reversed by the U.S. Court of Appeals for the Federal Circuit in *Saarstahl AG v. United States*, 78 F.3d 1539 (Fed. Cir. 1996) ("*Saarstahl II*").

The panel also clarified the applicable standard of review. It found inapplicable the standard of review expressly set forth in the WTO Antidumping Agreement, which provides that dispute resolution panels should uphold reasonable interpretations of that agreement by national administering authorities, even if the panels themselves would have reached different conclusions. The Subsidies Agreement does not contain this language, and the panel ruled that the applicable standard of review is the one set forth in the DSU, which is to make an objective assessment of the matter before the panel, including the conformity of the measure in question with the relevant WTO agreement.

On January 27, 2000, the United States notified the DSB that it would appeal the panel's decision.

ATTACHMENT 1

SUBSIDIES ENFORCEMENT: *ASSISTING U.S. EXPORTERS TO COMPETE EFFECTIVELY*

Subsidies Enforcement Office: The Department of Commerce's Import Administration is responsible for coordinating multilateral subsidies enforcement efforts. The primary mission is to assist the private sector by monitoring foreign subsidies and identifying subsidies that can be remedied under the Subsidies Agreement of the World Trade Organization, of which the United States is a member. To fulfill this mission, Import Administration has created the Subsidies Enforcement Office (SEO). As part of its monitoring efforts, the SEO has created a Subsidies Library, which is available to the public via the Internet (www.ita.doc.gov/import_admin/records/). The goal is to create an easily accessible one-stop shop that provides user-friendly information on foreign government subsidy practices.

As an illustration:

A U.S. exporter is bidding on a project in Country A and is competing against an exporter from Country B. The company from Country B offers a bid that is extremely low, possibly even below what one would assume to be the cost of production. The U.S. exporter may have knowledge that the reason the company from Country B is able to bid so low is that it is being assisted by its government with low cost loans and payment of various export related expenses. In such a situation, we would encourage the U.S. exporter to collect as much information as possible concerning the potential subsidies and then contact us with all of the relevant information. We would then check further into the types of subsidies being received and determine whether any action should be taken.

Types of Subsidies: A subsidy can be almost anything a government does, if the following conditions are met: (1) a financial contribution is made by a government or public body and (2) a benefit is received by the company. Trade rules permit remedies in circumstances when subsidies are "specific" (*i.e.*, provided to a limited number of companies, such as all exporters) and have caused adverse trade effects. Subsidies can take a variety of forms. Following are some of the types of foreign subsidies that could place a U.S. exporter at a competitive disadvantage vis-a-vis a foreign competitor.

- ***Export financing*** at preferential rates.
- ***Grants or Tax exemptions*** for favored companies or industries.
- ***Loans that are conditioned on meeting local content requirements***, or are contingent upon the use of domestic goods over U.S. exports (commonly referred to as "import substitution subsidies").

Types of Remedies: Remedies for violations of the Subsidies Agreement could involve requiring the foreign government to eliminate the subsidy program or its adverse effect, or, as a last resort, to authorize offsetting compensation.

***Questions and information can be referred to*:**

Carole Showers tel.: (202) 482-3217
fax : (202) 501-7952
e-mail: Carole_Showers@ita.doc.gov

Working Together to Assist U.S. Exporters: The SEO welcomes any information about foreign subsidy practices that may adversely affect U.S. companies' export efforts. The SEO can evaluate the subsidy in relation to U.S. and multilateral trade rules to determine what action may be possible to take to counteract such adverse effects. By working together to monitor foreign subsidies and enforce the Subsidies Agreement, we can ensure that U.S. companies are competing in a fair international trading system.

ATTACHMENT 2

THE SUBSIDIES ENFORCEMENT LIBRARY

www.ita.doc.gov/import_admin/records/esel

First Screen

Electronic Subsidies Enforcement Library

Table of Contents:

- *Overview Of The Subsidies Enforcement Office*
- *Subsidy Programs Investigated By DOC*
- *WTO Subsidies Notifications*
- *Reports to Congress*
  - *Annual Report on Subsidies Enforcement*
  - *Review and Operation of the WTO Subsidies Agreement (June 1999)*

Description of Choices

- *Overview of the Subsidies Enforcement Office*

This links the visitor to the informational page found in Attachment 1 to this report.

< ***Subsidy Programs Investigated By DOC***

This links the visitor to information on subsidy programs analyzed by Import Administration staff during CVD proceedings. After clicking on this topic, the visitor will find the countries listed alphabetically and divided further with links to subsidy programs within that country that are not "in name" specific to a certain industrial sector ("general") and programs that are used only by certain sectors ("industry"). For example:

BRAZIL					
Subsidy Type	***Program Codes***				
General	1	2	3	4	5
Industry	1	2	3	4	5

Thus, if a visitor to the site were interested in subsidies that are available specifically to the steel sector in Brazil, they would chose ***Brazil º Industry*** and then examine the information provided. Once a subsidy program of interest is found in this section, one click on that program title will take the visitor directly into the Federal Register notice where a complete description of the program and Commerce's analysis is provided.

The second sub-division of programs within this topic, as shown above, is based on the classification of the subsidy program by Commerce. There are five categorizations: (1) countervailable, (2) non-countervailable, (3) terminated, (4) not used and (5) found not to exist. These categories track the methodology used by Commerce and found in its decisions as published in the Federal Register. Descriptions for each of these terms are provided in the *Subsidies Library*. This level of detail allows a visitor to the library to find the exact type of information he or she is seeking.

Using the same example as described above, if a visitor were interested in finding out which subsidy programs Commerce had countervailed involving steel products exported from Brazil, they would select ***Brazil º Industry º Countervailable Programs*** and then review the information provided. If more detailed information about a particular subsidy program is required, a click of the mouse on the program title will take the visitor directly into the Federal Register notice where such information is readily available.

The charts on the following three pages provides a view of what is located on the Subsidies Enforcement web site.

UNITED STATES DEPARTMENT OF COMMERCE
IMPORT ADMINISTRATION

ELECTRONIC SUBSIDIES ENFORCEMENT LIBRARY

KEY TO SUBSIDY PROGRAM CODE

1 = COUNTERVAILABLE
2 = NON-COUNTERVAILABLE
3 = TERMINATED
4 = NOT USED
5 = FOUND NOT TO EXIST

AUSTRIA

BANGLADESH

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

SUBSIDY TYPE PROGRAM CODES
General 1 2 3 4 5
Industry 1 2 3 4 5

BRAZIL

CANADA

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

CHILE

D
E
N
M
A
R
K

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

EL SALVADOR

GERMANY

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

GREECE

INDIA

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

IRAN

IRELAND

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

ISRAEL

ITALY

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

PORTUGAL

SOUTH AFRICA

SUBSIDY TYPE	PROGRAM CODES				
SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
General	1	2	3	4	5
Industry	1	2	3	4	5
Industry	1	2	3	4	5

SPAIN

S
W
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D
E
N

SUBSIDY TYPE	PROGRAM CODES				
SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
General	1	2	3	4	5
Industry	1	2	3	4	5
Industry	1	2	3	4	5

TAIWAN

THAILAND

SUBSIDY TYPE	PROGRAM CODES				
SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
General	1	2	3	4	5
Industry	1	2	3	4	5
Industry	1	2	3	4	5

TURKEY

UNITED KINGDOM

SUBSIDY TYPE	PROGRAM CODES				
SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
General	1	2	3	4	5
Industry	1	2	3	4	5
Industry	1	2	3	4	5

VENEZUELA

SUBSIDY TYPE	PROGRAM CODES				
General	1	2	3	4	5
Industry	1	2	3	4	5

Descriptions of choices (continued from pg.1)

< ***WTO Subsidies Notifications***

This will link the visitor to all derestricted WTO subsidy notifications, by country. Beneath each country's name is the date the document was submitted to the WTO and the date it was posted to the WTO web site. This listing provides each type of notification, *i.e.,* new and full, update or a supplement to an earlier filing. (*See* discussion above in report.) Clicking on the name of the country next to the document of interest, will take the visitor directly to that country's subsidy notification. If subsidies have been notified, a listing of those subsidies is provided, in addition to specific information concerning the subsidy program, such as the type of incentive provided and the duration and purpose of the program. Several of the larger countries have provided information on hundreds of subsidy practices. Although the Subsidies Agreement stipulates that the notification of a subsidy practice does not prejudge its legal status under the Agreement, these notifications do provide detailed information concerning a number of countries' subsidy measures.

< **Reports to Congress:**
SEO Annual Report

This links the visitor to the most recent Subsidies Enforcement Annual Report to Congress.

< **Reports to Congress:**
Review and Operation of the WTO Subsidies Agreement

This links the visitor to the June 1999 report to Congress that reviewed the operation of the WTO Subsidies Agreement. (*See* discussion above in report.)